

In the Matter of Merchant Mariner's Document No. Z-582905-D1 and all other Licenses,
Certificates and Documents

Issued to: EUGENE MALLON

DECISION AND FINAL ORDER OF THE COMMANDANT
UNITED STATES COAST GUARD

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EUGENE MALLON

This appeal has been taken in accordance with Title 46 United States Code 239(g) and Title 46 Code of Federal Regulations Sec. 137.11-1.

By order dated 28 February 1956, an Examiner of the United States Coast Guard at New York, New York, revoked Merchant Mariner's Document No. Z-582905-D1 issued to Eugene Mallon upon finding him guilty of misconduct based upon three specifications alleging in substance that while serving as an elevator operator on board the American SS UNITED STATES under authority of the document above described, on or about 2 September 1955, he physically molested a passenger, Mrs. Patricia S. Thimsen (First Specification); on or about 3 September 1955, he physically molested Mrs. Patricia S. Thimsen (Second Specification); and on or about 5 September 1955, he physically molested a passenger, Mrs. Betty Symonette (Third Specification).

At the hearing, Appellant was given a full explanation of the nature of the proceedings, the rights to which he was entitled and the possible results of the hearing. Appellant was represented by counsel of his own choice and he entered a plea of "not guilty" to the charge and each specification proffered against him.

Thereupon, the Investigating Officer and Appellant's counsel made their opening statements. The Investigating Officer introduced in evidence, without objection, the depositions of the two women taken by interrogatories. He also introduced a certified copy of an entry in the Official Logbook relative to the written complaints filed by two women.

In defense, appellant offered in evidence his sworn testimony. He stated that one of the complainants fell against him in the elevator when the ship rolled and she was disagreeable when Appellant asked her if she was all right.

At the conclusion of the hearing, having heard the arguments of the Investigating Officer and Appellant's counsel and given both parties an opportunity to submit proposed findings and conclusions, the Examiner announced his decision and concluded that the charge and three specifications had been proved. He then entered the order revoking Appellant's Merchant Mariner's Document No.

Z-582901-D1 and all other licenses, certificates and documents issued to Appellant by the United States Coast Guard or its predecessor authority.

Based upon my examination of the record submitted, I hereby make the following

FINDINGS OF FACT

On a voyage covering the dates of 2 September 1955 to 6 September 1955, inclusive, Appellant was serving as an elevator operator on board the American SS UNITED STATES and acting under authority of his Merchant Mariner's Document No. Z-582905-D1 while the ship was at sea outward bound from New York City.

At approximately 1400 on 2 September 1955, a 19-year-old passenger, Mrs. Patsy S. Thimsen (referred to in the specifications as Mrs. Patricia S. Thimsen), entered the tourist elevator operated by Appellant. The elevator could be operated by lever or by automatic push button. Mrs. Thimsen was carrying her 2 1/2-months-old son. After all the other passengers had left the elevator, Appellant admired the baby but said that his mother was much prettier. Appellant then placed his hands on Mrs. Thimsen's arms and stroked them. She asked Appellant to stop and let her off the elevator. Appellant did so.

At 1330 on 3 September 1955, Mrs. Thimsen was the only passenger on the elevator when Appellant invited her to go to lunch with him and again caressed her arms with his hands. Appellant took his hands off Mrs. Thimsen's arms when requested to do so and she left the elevator.

At approximately 1100 on 5 September 1955, Mrs. Betty Symonette, a 21-year-old passenger, had her baby with her when she entered the elevator operated by Appellant. Nobody else was on the elevator. Appellant attempted to put his arms around Mrs. Symonette. She resisted Appellant's advances. Appellant repeatedly asked Mrs. Symonette to kiss him until the elevator stopped and she forced her way out of it.

These two women passengers filed written complaints at the same time on 6 September after discussing the matter with each other.

Appellant has no prior record.

BASIS OF APPEAL

This appeal has been taken from the order imposed by the Examiner. Appellant contends that:

POINT I. The finding that the charge was proved is against the weight of the evidence. The two women had talked to each other about Appellant's alleged actions and their testimony shows that the molestation was more imaginary than real. It is implausible that any molestation would occur while the women were carrying babies.

The women took offense simply because Appellant spoke to them.

POINT II. Revocation is excessive in view of Appellant's unblemished record for 11 years. This indicates that there would be any risk in permitting Appellant to return to sea in order to earn a living. In conclusion, it is respectfully requested that Appellant's document be returned to him or that the order of revocation be modified to a suspension.

APPEARANCES: William L. Standard, Esquire, of New York City by Morton J. Heckerling, of Counsel.

OPINION

The two depositions constitute substantial evidence in support of the allegations. The Examiner rejected Appellant's denials. There has been no motive for fabrication presented except Appellant testimony that one the women became irritated when she fell against Appellant as the ship rolled. This is too weak to accept as the reason why two passengers would suffer the embarrassment involved in making such complaints about a member of the crew. No doubt such embarrassment caused the two women to be reluctant to complain until they received mutual support by discussing the matter with each other. Mrs. Symonette stated that she thought it was her duty to complain in order to protect others against the same thing.

The two incidents involving Mrs. Thimsen could have occurred just as easily whether or not she was carrying her son. Concerning Mrs. Symonette, there is no evidence as to her baby's age or whether she was carrying the baby while on the elevator at the time in question.

Regardless of Appellant's prior clear record, the order of revocation is appropriate due to the serious nature of the offense of molesting female passengers. The law recognizes the high standards which must be upheld with respect to the treatment of such passengers. Chamberlin v. Chandler (1823), Fed. Cas. 2575.

ORDER

The order of the Examiner dated at New York, New York, on 28 February 1956 is ~~REVERSED~~ **FIRMED**.

A. C. Richmond
Vice Admiral, United States Coast Guard
Commandant

Dated at Washington, D. C., this 4th day of October, 1956.